

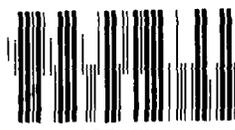
GAO

Fact Sheet for the Chairman,
Subcommittee on Environment, Energy,
and Natural Resources, Committee on
Government Operations
House of Representatives

June 1986

SURFACE MINING

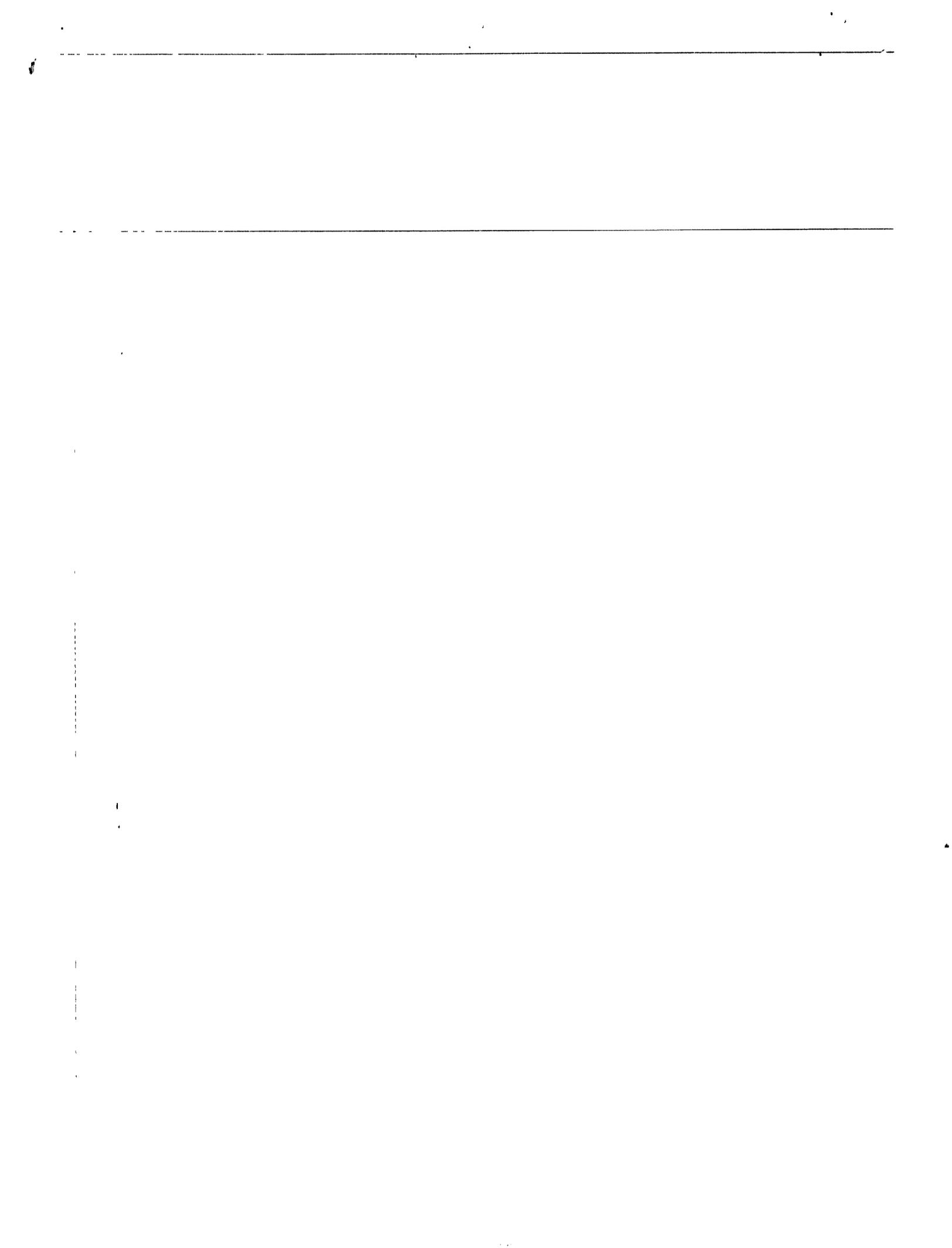
Information on Coal Mining Citations Issued By Kentucky Inspectors



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UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

RESOURCES COMMUNITY
AND ECONOMIC DEVELOPMENT
DIVISION

June 30, 1986

B-223410

The Honorable Mike Synar
Chairman, Subcommittee on Environment,
Energy, and Natural Resources
Committee on Government Operations
House of Representatives

Dear Mr. Chairman:

On March 24, 1986, you requested that we examine all notices of non-compliance and cessation orders submitted by Kentucky to the Department of the Interior's Office of Surface Mining Reclamation and Enforcement (OSMRE) in the past year to determine whether any Kentucky mining inspectors have failed to issue such citations. If certain inspectors did not issue citations, you asked that we determine the reasons why, and what action, if any, has been taken by OSMRE. Subsequently, your office requested that we obtain similar information from the state of Kentucky on all inspectors who issued 5 or fewer citations. On April 29, 1986, we briefed your office on the information we had obtained. As we agreed at the briefing, this fact sheet summarizes the information you requested.

To obtain this information, we (1) reviewed 4,253 notices of non-compliance and cessation orders submitted by Kentucky to OSMRE covering the period March 1, 1985, through March 1986,¹ (2) interviewed OSMRE Lexington Field Office officials, (3) interviewed the Commissioner, Kentucky Department for Surface Mining Reclamation and Enforcement, and (4) interviewed 12 of the 14 Kentucky inspectors who did not issue citations during our review period.

In summary, we found that 40 of the 175 state mining inspectors assigned to enforce Kentucky's coal mining regulations under the Surface Mining Control and Reclamation Act of 1977 had issued 5 or fewer citations during the period. However, 20 were chief inspectors who supervise other inspectors and, as a result, do not normally issue citations. Five of the remaining 20 inspectors did not issue a citation during the period. The

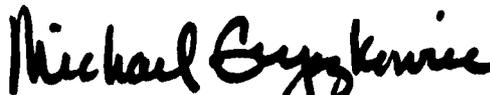
¹Because citations for March 1986 were available at the OSMRE Lexington Field Office at the time of our visit, we included this information in our review.

reasons these 20 inspectors issued few or no citations varied. The major reasons cited by Kentucky officials were that the inspectors were assigned to large mines that historically have experienced few problems, were assigned to review permits rather than inspecting mines, or were recently hired employees. The attachment provides more detailed information on these inspectors and on actions taken by the OSMRE's Lexington Field Office and the state of Kentucky to improve Kentucky's enforcement activities.

As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of the report. At that time we will send copies to the Secretary of the Interior. Copies will also be made available to other interested parties upon request.

If you would like to discuss this matter further or have any comments, please call me on 275-7756.

Sincerely yours,

A handwritten signature in black ink that reads "Michael Gryszkowiec". The signature is written in a cursive, slightly slanted style.

Michael Gryszkowiec
Associate Director

REASONS WHY CERTAIN INSPECTORS ISSUED FEW CITATIONS

Recognizing the need for a comprehensive nationwide program to control the adverse effects of coal mining, the Congress enacted the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Since mining takes place in 27 states under different conditions and practices, the act encouraged states to assume primary regulatory responsibility. On May 18, 1982, the Secretary of the Interior granted Kentucky exclusive regulatory jurisdiction over coal mining and reclamation activities within the state. The primary regulatory responsibility for the Kentucky program rests with the Department for Surface Mining Reclamation and Enforcement.

To ensure that mine operators comply with the approved state program environmental and performance standards and their mining permits, state mining inspectors are required to perform not less than one partial inspection and one complete inspection per calendar quarter at each mine. If state inspectors determine that a mining or reclamation activity is not in compliance, they must issue a citation. In Kentucky the citations consist of a Notice of Non-Compliance, which requires the mine operator to correct the violation within a given time period, or an Order for Cessation and Immediate Compliance, which requires the operator to immediately correct the violation (mining may or may not be halted). As of March 1986 a total of 175 mining inspectors in seven regional offices were assigned to carry out this responsibility.

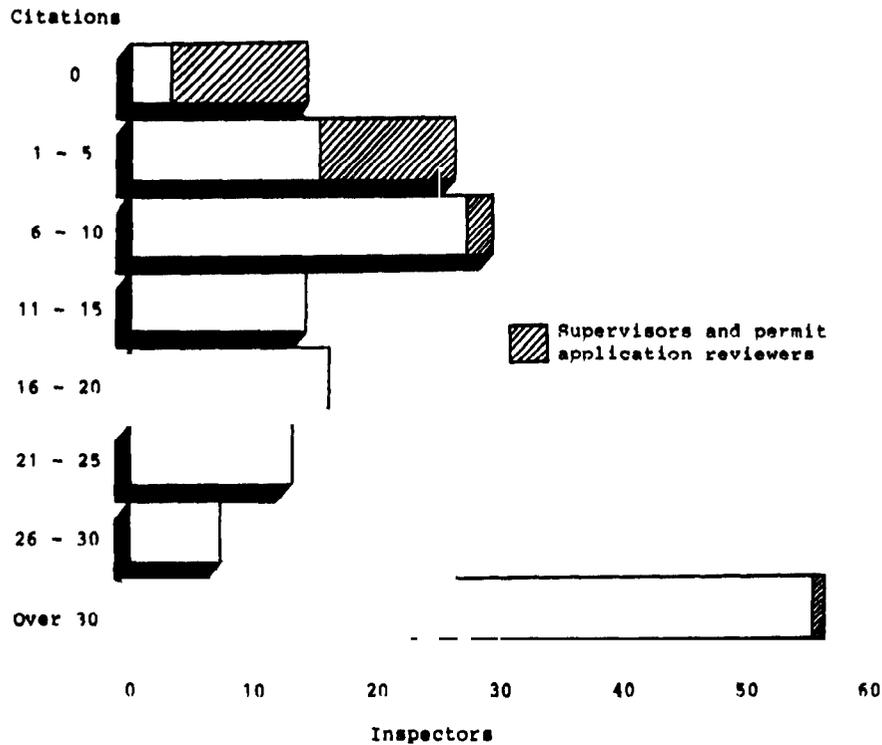
During the period March 1, 1985, through March 1986, the 175 inspectors issued 3,986 citations.¹ Figure 1.1 shows how these citations were distributed among the inspectors. As shown, 14 of the 175 state mining inspectors did not write a citation during the period under review. We interviewed 12 of these inspectors and found that 9 were chief inspectors who supervised other mining inspectors and, therefore, do not normally issue citations.² The remaining five inspectors did not issue citations for the following reasons:

¹Actual citations numbered 4,253, but 244 were written by Kentucky mining inspectors who are no longer with the state, and 23 citations were issued by members of Kentucky's Special Investigations Branch. Special investigators in this branch do not inspect mine sites for compliance with environmental and performance standards; instead they follow up on observations made by inspectors and citizens related to mining without a permit as part of a statewide criminal enforcement effort.

²We did not interview two inspectors: one was on extended sick leave and the other is no longer employed by the state.

- Two were assigned to review permit applications instead of inspecting mines; therefore, they were not in a position to issue citations.
- One has been on sick leave without pay since February 1985.
- One was hired in December 1985 and did not begin independently inspecting mines until April 1, 1986.
- One was hired in July 1985 and was in training until November 1985. Since November, the inspector had not observed any mining violations.

Figure 1.1: Frequency Distribution of Inspectors vs. Citations, March 1, 1985 - March 1986



We also identified 26 inspectors who issued from 1 to 5 citations during our review period. Eleven of these 26, however, were chief inspectors who do not normally issue citations. The Commissioner, Kentucky Department for Surface Mining Reclamation and Enforcement, provided the following reasons for the number of citations written by 14 of the remaining 15 inspectors.³

³The commissioner did not provide a reason for one inspector. However, he stated that OSMRE staff performed three inspections between September 1985 and March 1986 on mines assigned to this inspector and found no violations.

--Five were recently hired employees.

--One inspects mines of a large company that Kentucky believes is well run. The commissioner said that OSMRE inspections of this inspector's mines resulted in two 10-day notices (notices that require the state to take appropriate action or show good cause for failure to do so). According to the commissioner, OSMRE acknowledged that one 10-day notice was inappropriate and on the other, the inspector issued a Notice of Non-Compliance.⁴

--Six generally inspect large mines operated by companies that historically have experienced few problems, according to the commissioner. He said that between September 1985 and March 1986 OSMRE performed 13 inspections of mines assigned to these inspectors and found two alleged violations at mines assigned to one inspector. OSMRE, however, took no enforcement action.⁵

--One cited only the five violations he observed during his inspections.

--One was under suspension from January 4, 1985, to October 1, 1985. (Note: No reason was provided for the October 1985 through March 1986 period.)

⁴The OSMRE Lexington Field Office Director, however, disputed the commissioner's portrayal of this situation. He said "From March 1, 1985, to March 1, 1986, OSMRE conducted three complete oversight inspections . . . Two of these inspections resulted in ten-day notices, totaling nine violations. At least five of these were considered serious violations, with two creating off-site damage; both were determined to have been previously existing uncited violations. Of the nine violations found by OSMRE, seven were corrected by the company without a State violation being issued. In one case the State did issue a violation, and in the another case OSMRE issued a Federal notice of violation. None of the nine were acknowledged by OSMRE as being inappropriate."

⁵The OSMRE Lexington Field Office Director again disputed the commissioner's claims that two violations were found and that OSMRE had not taken enforcement action. He said that an OSMRE inspector found only one violation, which related more to state policy on eliminating mining highwalls than to individual inspector performance. In a January 15, 1986, letter to the state, OSMRE expressed its concerns with the state policy and requested a state response. As of June 2, 1986, the state had not responded.

We discussed OSMRE's activities with respect to this issue with the OSMRE Lexington Field Office Director. According to the director, in the March-April 1985 timeframe OSMRE inspectors began to document and photograph violations noted during their annual inspections that they believed had been missed by the state inspectors in their last inspection of the site. This information, as well as OSMRE's Semiannual Report on the Kentucky Permanent Program, was provided to the commissioner in early December 1985. At that time the state was informed that if the problems noted by OSMRE were not corrected by the end of the June 1986 annual oversight inspection period, OSMRE would initiate action to start removing regulatory authority from the state.

In October 1985 the OSMRE Lexington Field Office began collecting statistics on citations written by state inspectors to determine the extent to which individual inspectors were writing citations. As of March 28, 1986, OSMRE had identified 37 inspectors who had not written a citation during the 6-month period since October 1, 1985.⁶ In addition to providing this information to the state, the OSMRE Lexington Field Office Director also presented this information to all Kentucky mining inspectors during Kentucky's 4-day refresher training courses held at Eastern Kentucky University. These courses emphasized the need for vigorous inspection and enforcement efforts and provided inspectors with the latest changes in the regulations and additional training in specific subject areas, such as subsidence, blasting, and 2-acre permits.

We asked the commissioner to respond to our findings and the actions being taken as a result of OSMRE's study findings. In a May 12, 1986, letter, he stated that OSMRE's findings could help pinpoint where supervisors need to concentrate their efforts. However, he said that the real test of an inspector's performance is whether the violations the inspector cites are appropriate to the actual condition of the mines he oversees, not merely the number of citations he cites. He said that the state does not accept the idea of a "quota system," which is being advanced by OSMRE. With respect to actions being taken by the state as a result of the information OSMRE provided, the commissioner said that the state has continued to monitor the performance of its inspectors and continues to seek new ways to improve that monitoring. He noted that Interior is establishing a special four-person quality review team to provide even more communication between the central office and the inspectors located in the seven regional offices.

⁶We identified fewer inspectors who had not written citations because our review period was 7 months longer than OSMRE's, which afforded inspectors more time to write citations for inclusion in the analysis.

The OSMRE Lexington Field Office Director strongly disputed the commissioner's contention that OSMRE has "advanced" the concept of a quota system for violations. He said that OSMRE collected the data and presented it to the state for its use. Further, he said OSMRE's main point was that a number of Kentucky inspectors have extremely low citation rates and, on the basis of subsequent OSMRE inspections, are missing certain violations during their inspections.

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